IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.1432 OF 2004

Irappa Basappa Chimangri & Ors. ...Appellants

vs.

Annarao Tukaram Sutar & Ors. ...Respondents

Ms A.R.S.Baxi for the Appellants
Mr.G.S.Godbole for Respondent Nos.1 & 2

CORAM: A.S.OKA,J.
DATE : MARCH 17,2005.

P.C.:

1. Heard learned Counsel for the parties.

2. The Appellate Court has held that the order passed by the Tahsildar in exercise of jurisdiction under Section 143 of Maharashtra Land Revenue Code, 1966 is null and void. The Appellate Court has held that when there was an existing passage available to the Appellants, the Tahsildar could not have exercised jurisdiction under Section 143 of the said Act of 1966. Considering the scope of the suit challenging the order under Section 143 of the said Act of 1966 and limited powers conferred by Section 143 of the said Code, there is no error in the impugned Judgment and Decree. While passing decree in favour of the original Plaintiffs, the Appellate Court has issued following directions :

> "However, it is directed to the Plaintiffs to clear the thorny bushes, at their cost, if placed in the already existing cart road Sangogi-Aland-Chillehali and make that road clear covering the area of road adjoining their fields for user of the already existing cart road to the respondents.

> . The Respondents are at liberty to use the already existing old cart road for their approach to the fields. The respondents are also restrained perpetually for approaching their fields from the field Gat No.54,55 and 56."

Till today there is no Appeal preferred by the original Plaintiffs for challenging the aforesaid directions.

3. In my view, in the facts and circumstances of the case the Appellate Court was justified in giving aforesaid directions for protecting the rights of the Appellants. If the said part of the decree is not complied with, it is always open for the Appellants to take appropriate steps for enforcing the said part of the decree.

4. The Appellants have been restrained from approaching their fields from Gat No.54,55 and 56 on the basis of the order of Tahsildar which is held to be null and void. There is no error. When the Appellants have another way available, the Tahsildar passed an order under Section 143 and that also through a land of the Respondent Nos.1 and 2. Hence, Appeal is dismissed with no order as to costs.

5. It is made clear that notwithstanding the dismissal of the Second Appeal and the confirmation of impugned Judgment and Order, it will be open for the Appellants to file appropriate proceedings in the Civil Court for establishing their right of easement, if any.

6. Parties to act upon an ordinary copy of order.

JUDGE.